

Planning Commission Date: April 9, 2003

Item No. ***5**

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report prepared by: Staci Pereira

Public Hearing: Yes: X No:

Notices Mailed On: 3-28-03

Published On: 3-27-03

Posted On: 3-28-03

TITLE: USE PERMIT NO. P-UP2003-9

Proposal: A request to operate a 1,200 square feet grocery and meat market (Milpitas Halal Market) at Fiesta Plaza.

Location: 74 Dempsey Road (APN 88-04-001)

RECOMMENDATION: Approval with conditions.

Applicant: Al-Khafaji Hassan, 895 Shirley Avenue, Sunnyvale, CA 94086

Property Owner: Joseph Leung, Fiesta Plaza, P.O. Box 360694, Milpitas, CA 95036

Previous Action(s): "S" Zone approval and amendments, use permits

Environmental Info: Exempt

General Plan Designation: Retail Sub-Center

Present Zoning: Neighborhood Commercial ("C1") District

Existing Land Use: Shopping center

Agenda Sent To: Applicant and owner (both noted above)

Attachments: Site plans and letter from applicant dated March 3, 2003

PJ No. 2321

BACKGROUND

The Fiesta Plaza shopping center was built in the 1960's. Unit 1, a 12,720 sq. ft. building was approved on April 26, 1962 and Unit 2, an 8,624 sq. ft. building was approved on April 22, 1964.

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Subsequent approved amendments include exterior elevation modifications on January 10, 1968, landscape plan for Unit 2 on May 19, 1964, roof screen on July 21, 1975, building sign on August 3, 1978, mansard roof and fencing on April 1, 1982, sign program on November 3, 1983, and a new main entrance door on January 2, 1986. Use Permit No. 1142 for a massage parlor was approved by Planning Commission on July 8, 1992, however, was denied by the City Council on August 4th of the same year. The Planning Commission approved Use Permit No. 1509 on July 14, 1999 for Gomez Market, a grocery store with beer and wine sales.

The applicant currently operates a wholesale market located at 479 Los Coches. However, a retail grocery and meat market is not a permissible use at the current location, hence this application at the subject site.

Site Description

The site is zoned Neighborhood Commercial ("C1") and located east of I-680 on the east side of Dempsey Road between Dempsey Way and Selwyn Drive. The property is occupied by the Fiesta Plaza shopping center which consists of 21,168 square feet of leasable space. The tenant spaces are primarily occupied by retail sales and service businesses and restaurants. The proposed market would be located in a 1,200 sq. ft. tenant space located in the east building.

Property to the south is zoned for high density residential uses and to the west is a Caltrans maintenance yard and commercially zoned property with several churches. The property to the east of the site is vacant and a Santa Clara Valley Water District channel runs under the property from east to west.

THE APPLICATION

The application is submitted pursuant to Section 18.03-6 (uses permitted in "C1" district subject to receiving a conditional use permit) and Section 57.00 (Conditional Use Permits) of the Milpitas Zoning Ordinance.

The applicant proposes to operate a grocery and meat market called the Milpitas Halal Market, in a 1,200 sq. ft. tenant space at Fiesta Plaza. The market intends to provide the local Muslim community with middle-eastern food, gifts and fresh kosher meat. The market would operate between 9:00 AM and 7:00 PM. The front half of the tenant space, approximately 680 sq. ft., would contain the retail displays for customers and consist of shelving for dry goods, a meat display case, coolers for bottled beverages and ice cream, and a display counter with cash register at the front near the entrance. The rear half of the tenant space, approximately 520 sq. ft., is where the meat preparation would occur. This area includes a prep table, walk-in cooler, counter with meat slicer, band saw and grinder, three bay sinks, and prep and hand sinks. In addition, a handicapped accessible restroom and separate room with a mop sink and hot water heater would also be located in the rear (see floor plan, sheet A-2).

ISSUES

Conformance with the General Plan

The proposed project complies with the City's General Plan in terms of land use. The use does not conflict with any General Plan Principles and Policies, and is consistent with Implementing Policy 2.1-I-3, which encourages economic pursuits which will strengthen and promote development through stability and balance. It is also consistent with Policy 2.1-I-6, which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.

Conformance with the Zoning Ordinance

The proposed project is located in the Neighborhood Commercial ("C1") District and is permitted conditionally in this district upon receipt of a conditional use permit. In addition, the intent of the "C1" district is to promote commercial development that complements the essential residential character of the area. This project is consistent with the intent of this district because it will provide an option for persons to purchase specialty groceries and meats. The small floor area of the store (1, 200 sq. ft.) indicates that it will not become a regional supermarket.

Parking

The multi-tenant buildings in Fiesta Plaza were provided parking at a ratio of 1 space per 200 sq. ft. for retail use. Based on the size of the subject tenant space, 1,200 sq. ft., 6 parking spaces are allotted to 74 Dempsey Road. The proposed use is consistent with a retail use and would not require any parking in excess of the 6 stalls allocated to the tenant space. Therefore, the proposed project is not anticipated to impact parking at Fiesta Plaza.

Solid Waste

Waste generated from the proposed use may produce odors and non-point source issues. Food products that spoil or are spilled may also turn into waste. Food wastes from this use are likely to generate unpleasant odors if not handled properly. Given this likelihood, *staff recommends* a condition that all trash be double-bagged and transported to the on-site trash facilities and the rear of the shopping center. Furthermore, *staff recommends* that the trash receptacle area be kept clean and all spills cleaned up immediately.

Neighborhood/Community Impacts

The proposed grocery and meat market is expected to have a positive community impact by providing a unique service to the City of Milpitas. The market will attract residents to the Fiesta Plaza, which will support other retail and service establishments in the area. In addition, the hours of operation are similar and consistent with surrounding uses in Fiesta Plaza and is not expected to generate any additional noise levels than what currently exists. Based on this and the conditions imposed upon the project, the proposed use is not anticipated to affect parking and traffic, or generate odors or health and safety hazards impacting the surrounding area or nearby

residential neighborhoods and therefore will not be detrimental or injurious to the public health, safety and general welfare.

Conformance with CEQA

The project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities", interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances) of the Environmental Quality Act (CEQA) guidelines.

RECOMMENDATION

Close the public hearing. Approve Use Permit No. P-UP2003-9 based on the findings and special conditions listed below.

FINDINGS

1. The proposed use is consistent with the City of Milpitas General Plan in terms of land use and is consistent with Implementing Policies 2.a-I-3 and 2.a-I-6, which encourage economic pursuits that strengthen and promote development through stability and balance and that which endeavors to maintain a balanced economic base that can resist downturns in any one economic sector.
2. The proposed use is consistent with the intent of the Neighborhood Commercial "C1" District which promotes commercial development that complements the essential residential character of the area and in that the district permits such uses with a Use Permit.
3. The proposed use is not expected to generate an increase in noise levels and as conditioned, is not anticipated to affect parking and traffic, or generate odors or health and safety hazards impacting the surrounding area or nearby residential neighborhoods and therefore will not be detrimental or injurious to the public health, safety and general welfare.
4. The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities", interior or exterior alterations involving such things as interior partitions, plumbing and electrical conveyances) of the State CEQA Guidelines.

SPECIAL CONDITIONS

1. This Use Permit No. P-UP2003-9 approval is for a new 1,200 sq. ft. grocery and meat market at 74 Dempsey Road, as shown on approved plans dated April 9, 2003 and as amended by these special conditions. Minor changes, as per Section 42.10-2 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff. (P)
2. This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations. (P)

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3. This approval does not include any signs. Any new signage shall adhere to the sign program for the Fiesta Plaza and shall be submitted and approved by the Planning Division. (P)
4. If at the time of application for building permit there is a project job account balance due to the City for recovery of fees, review of permits will not be initiated until the balance is paid in full. (P)
5. The trash and dumpster areas shall be maintained and kept clean by double-bagging all food garbage produced by the market and by frequent sweeping and disposal of any spilled solid waste. (P)
6. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI:
 - A. Adequate level of service for trash collection. Subscribe to garbage service 1 - 4 cyd 3x/week.
 - B. Adequate level of service for recycling services collection.
 - C. Meat scraps must be disposed of in tied double-bagged plastic bags; also ensure that liquid food grease is not disposed of in the solid waste bins.
 - D. The low hanging wires serving the building shall be raised to 17 feet minimum above the ground to provide safe access to the solid waste bins.After the applicant has started its business, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
7. The applicant shall submit a Sewer Needs Questionnaire and/or Industrial Waste Questionnaire with the building permit application and pay the related fees prior to Building Permit issuance by the Building Division. Contact the Land Development Section at (408) 586-3329 to obtain the form(s). (E)

Planning Division = (P)
Engineering Division = (E)

NOTES TO THE APPLICANT

The following notes pertain to administration of the City codes and ordinances that are not part of the Zoning Ordinance regulations. The applicant shall not consider these notes as approval from any Department. Additional requirements may be made prior to permit issuance. These notes are provided to assist in the permit process if approval is granted.

BUILDING DIVISION [For further information regarding the following notes please contact Veronica Valenti at (408) 586-3241]

1. It is mandated to obtain a business license and certificate of occupancy prior to operating a business.

2. Plans shall be prepared and designed by an architect and/or engineer licensed in the State of California.
3. Required separation in buildings with mixed occupancy shall be per 2001 CBC, Table 3-B.
4. The applicant shall obtain permits from the Health Department and Water Pollution Control prior to applying for a building permit.
5. People with disabilities accessible parking shall be provided per 2001 CBC, Section 1129B.1. The required number of accessible parking shall be per 2001, Table 11B-6. Accessible parking spaces shall be dispersed and located closest to the accessible entrances. One in every eight accessible parking spaces, but not less than one parking space shall be accessible per Section 1129B.4.2.
6. Accessibility signs shall be provided at every primary public entrance, at every major junction along or leading to an accessible route of travel and at building entrance that are accessible per 2001 CBC, Section 1127 B.3.
7. All primary entrances and required exit doors shall be accessible to people with disabilities per 2001 CBC, Section 1114.B.1.3.
8. Food preparation areas shall be accessible to people with physical disabilities as per 2001 CBC, Section 1104B.5.8 and food services aisles and tableware areas per Section 1104B.5.5 and Section 1104B.5.6 accordingly.
9. Sanitary facilities shall be fully accessible to people with disabilities per 2001 CBC, Section 1115B. Separate facilities shall be provided for each sex when the number of employees exceeds four.
10. Counters provided for the public and in general employee area must be accessible at least 5%, but not less than one per 2001 CBC, Section 1122B.

FIRE DEPARTMENT [For further information regarding the following notes please contact Jaime Garcia at (408) 586-3369]

1. The 2001 triennial edition of the California Code of Regulations, Title 24 (California Building Standards Code) applies to all occupancies that applied for a building permit on or after November 1, 2002.
2. No certificate of occupancy shall be issued unless and until the requirements imposed by the Fire Code have been completed and final approval thereof, by the Fire Department, has been given and all inspection fees paid. Section 105.4 as amended by Section V-300-2.01 Milpitas Municipal Code.

3. Portable fire extinguishers shall be installed in occupancies and locations as set forth in the code, California Code of Regulations Title 19, Division 1, and Chapters 1 and 3 and as required by the Milpitas Fire Chief. Section 1002.1 CFC (California Fire Code).
4. No approval for hazardous materials is granted with this review. If hazardous materials are intended to be stored, transported on site, used or handled, in an amount requiring a permit, a **Hazardous Materials Business Plan (HMBP)** shall be submitted to the Fire Department by the business responsible. If hazardous materials are not intended to be stored, transported on site, used or handled in an amount requiring a permit, a Hazardous Materials/Waste Registration Form and/or a Hazardous Materials Exemption Declaration shall be submitted to the Fire Department by the business responsible. Required submittals shall be done at the time of building permit application.
5. Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort. Manual operated edge- or surface-mounted flush bolts and surface bolts are prohibited. Section 1207.3 CFC.
6. Exit doors shall swing in the direction of exit travel when serving any hazardous area or when serving an occupant load of 50 or more. Section 1207.2, CFC.
7. Obstructions, including storage, shall not be placed in the required width of a means of egress, except projections as allowed by the Building Code. Means of egress shall not be obstructed in any manner and shall remain free of any material or matter where its presence would obstruct or render the means of egress hazardous. Section 1203, CFC.
8. Combustible rubbish kept or accumulated within or adjacent to a building shall be stored in approved containers or in rooms or vaults constructed of noncombustible materials. Section 1103.2.1.2 UFC.
9. Dumpsters and containers of rubbish with an individual capacity of 1.5 cubic yards (40.5 cubic feet) or more shall not be stored or placed within 5 feet of combustible walls, openings or combustible roof eaves unless protected by an approved sprinkler system. Section 1103.2.2, CFC.

ENGINEERING DIVISION [For further information regarding the following notes please contact Robert Wang at (408) 586-3327]

1. It is the responsibility of the applicant to obtain any necessary encroachment permits or approvals from affected agencies or private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division.
2. Prior to building permit issuance, applicant must pay all applicable development fees, including but not limited to, plan check and inspection deposit.

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3. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters. Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329.
4. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Program shows this site to be in A Special Flood Hazard Area, Zone AO (depth 1). The proposed work to the existing structure is considered a non-substantial improvement and the zone designation is given for information only.

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**Proposal Letter
74 Dempsey Rd, Milpitas CA 95035**

To,
THE CITY OF MILPITAS
PLANNING / BUILDING DEPT

March 3, 2003

To Whom It May Concern

Dear Sir/Madam,


I have leased a unit on 74 Dempsey Rd and the area of the unit is 1200sqft. The lease for is unit is of 3 years with the option to continue doing business. In order to run this business by the name of Milpitas Halal Market.

Basically this business is for halal meat (Coacher Religiously) for Muslim communities in this neighborhood and the other people who like to buy fresh meat and the other added option with this is Middle Eastern groceries and gifts etc...The main supplier of meat, comes from Harris Ranch in Los Bannos CA.

I will appreciate, if u can help me out with the procedures as soon as you can, as for your information that I have already leased the place and have given the rent to the owner.

If you have any questions please do not hesitate to call me ph: 408-6460280

With regards
Yours sincerely


Hassan Al-Khafaji